

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(a). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115(a).

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re S.A., et al., Persons Coming
Under the Juvenile Court Law.

B292453

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No. DK17968A-B

Plaintiff and Respondent,

v.

A.A.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Steff R. Padilla, Juvenile Court Referee. Affirmed.

Stephanie M. Davis, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother Ana A. appeals from the dependency court's orders denying her petition under Welfare and Institutions Code¹ section 388, terminating her parental rights under section 366.26, and selecting adoption as the permanent plan for her 10-year-old daughter, Sophia, and 8-year-old son, Ricky. Mother's sole argument on appeal is that the court abused its discretion when it denied her section 388 petition after finding that her nascent drug rehabilitation efforts did not constitute changed circumstances sufficient to reinstate reunification services. Finding no error, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Mother has two children, Sophia and Ricky. At the time of the initial referral, mother had vacillated between living on the streets and living with the children in her mother's home with approximately 10 other people. Prior to the current proceedings, the Department of Children and Family Services (Department) received a referral relating to physical abuse of both mother and Ricky by Ricky's father.² Although the family initially agreed to

¹ All undesignated section references are to the Welfare and Institutions Code.

² Sophia and Ricky have different fathers. Neither father is participating in this appeal.

voluntary family maintenance services, they quickly moved out of the county and lost contact with the Department.

The Department became involved with the family most recently in June 2016, after receiving a referral stating that mother had slapped Sophia across the face causing redness and swelling on Sophia's face. During subsequent law enforcement interviews, both children reported previous physical abuse by mother. Sophia also disclosed that mother sometimes smokes drugs and " 'acts crazy,' " and that mother kept drugs in her purse or under the mattress. Mother admitted to using marijuana and methamphetamine; she had been arrested approximately one month earlier for possession.

The court detained the children and designated them as a sibling group to ensure placement together. The Department placed the children with foster parents, where they remained for the duration of these proceedings. In addition, the court ordered monitored visitation for mother two to three times per week, two to three hours per visit. The court also directed the Department to refer mother for parenting classes and individual counseling, as well as drug and alcohol counseling and testing. Over the next few months, mother's family attempted to have mother enroll in an inpatient drug treatment program. Mother refused and missed several drug tests.

In November 2016, the court found the following jurisdictional allegations true under section 300, subdivisions (a) and (b):³

“On 6/14/16, and on prior occasions, [mother] physically abused the child Sophia by striking the child’s face with the mother’s hand, inflicting a mark and swelling to the child’s right cheek. On prior occasions, the mother [struck] the child’s body with belts and shoes, inflicting marks on the child’s body. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The child is afraid of the mother due to the mother’s physical abuse of the child. On 6/14/16, the mother was arrested for Inflict[ing] Corporal Injury on a Child. Such physical abuse of the [child] by the mother endangers the child’s physical health and safety and creates a detrimental home environment, placing the child and the child’s sibling Ricky ... at risk of serious physical harm, damage, danger and physical abuse.”

“On prior occasions, [mother] physically abused the child Ricky by striking the child’s body with shoes inflicting marks on the child’s body. On prior occasions, the mother [struck] the child’s buttocks with belts. On prior occasions, the mother struck the child’s face with the mother’s hands. Such physical abuse was excessive and caused the child unreasonable pain and suffering. Such physical abuse of the child Ricky by the mother endangers the child’s physical health and safety and creates a detrimental home environment, placing the child and the child’s sibling Sophia ... at risk of serious physical harm, damage, danger, and physical abuse.”

³ In a related criminal proceeding, mother was convicted of child abuse and drug-related charges.

“[Mother] has engaged in physical altercations with maternal aunt [E.A.] in the presence of the children Sophia and Ricky, and has repeatedly made physical attack attempts and has physically attacked 14-year-old minor uncle [L.L.] in the maternal family home including having grabbed him in the throat area, resulting in another relative having had to intervene to stop further attack. The 14-year-old uncle is scared of the mother. The mother’s violence toward the minor maternal uncle is due to his physical resemblance to the step maternal grandfather, [L.L.], whom the mother repeatedly reported had sexually abused her as a minor child, and who presently resides in Mexico. Such acts by the mother placed the children’s emotional and physical safety at risk.”

The court found the following additional allegations true under section 300, subdivision (b) only:

“On prior occasions, [mother] placed the children in a detrimental and endangering situation in that mother kept illicit drugs in the mother’s purse and under a mattress in the children’s home within access of the children. Such a detrimental and endangering situation established for the children by the mother endangers the children’s physical health and safety and creates a detrimental home environment, placing the children at risk of serious physical harm and damage and danger.”

“[Mother] has a history of substance abuse, and is a current abuser of methamphetamine and marijuana, which renders the mother incapable of providing regular care of the children. The children are of such a young age requiring constant care ... and supervision of the children. On prior occasions, the mother was under the influence of illicit drugs while the children were in mother’s care and supervision. Such substance abuse by the

mother endangers the children's physical health and safety and creates a detrimental home environment for the children, placing the children at risk of serious physical harm, damage and danger."

The court ordered the children removed from mother's custody and suitably placed by the Department. Mother's court-ordered case plan required her to participate in a full drug and alcohol rehabilitation program with aftercare, a 12-step program, random, on-demand drug testing, and individual counseling to address case issues, past sexual abuse, inappropriate violence, and the impact of drug use on children.

In May 2017, the Department reported that both children were having some adjustment issues but were generally happy and doing well with foster mother. Both children were frustrated that mother had not visited them in over four months. For her part, mother had been arrested four times, failed to appear for drug testing on numerous occasions, and had not initially complied with the case plan. In late March 2017, however, mother entered a residential substance abuse treatment facility rehabilitation and was completing all her court-ordered programs at the facility.

In August 2017, the Department reported that the children continued to do well in their placement with the foster parents. Mother had been discharged from her residential treatment program due to her repeated noncompliance with the facility rules. After being discharged, mother repeatedly failed to appear for drug testing and was not participating in a 12-step program. Mother was able to enroll in another residential program but was discharged very quickly from that program as well.

Before mid-July 2017, mother visited the children consistently but her mood fluctuated drastically during the visits, causing mother to be combative. The children found mother's aggressive behavior toward them and foster mother disturbing. Both children expressed being afraid of mother due to her behavior during their visits. Mother discontinued her visits with the children in mid-July. Shortly thereafter, the Department opposed mother's request to have unmonitored visits with the children and recommended terminating reunification services. In addition, the foster parents agreed to adopt the children if they failed to reunify with mother.

In October 2017, the Department learned that mother was residing in a sober living home and was participating in several court-ordered programs including an outpatient drug treatment program. Mother still failed to appear for drug testing on numerous occasions, however.

In December 2017, the court terminated mother's reunification services and set the matter for a hearing under section 366.26.

In April 2018, the Department reported that the children were excited that they might be adopted by the foster parents. At that point, mother had not had contact with the children since mid-November 2017. The foster parents stated they were attached to the children and wished to provide them with a permanent home and the Department proceeded with permanency planning.

In May 2018, mother contacted the Department to advise that she had checked herself into a residential drug treatment facility and requested visitation with the children. And in July 2018, mother filed a petition under section 388 seeking custody of

the children and/or reinstatement of family reunification services upon her completion of the residential treatment program within 30 to 60 days.

Mother completed the drug treatment program on August 21, 2018, and moved back to her mother's home, contrary to the program's recommendation that she move to a sober living facility that would allow her to reside with her children. Mother's drug counselor advised the Department that mother was still in the early stages of recovery and would benefit from outpatient care as well as individual counseling. Mother stated, however, that she was looking for her own place and new employment. She advised the Department that she did not enter a sober living facility after completing her inpatient program because she could not afford the rent. Although mother was scheduled to meet with her caseworker on August 23, 2018, she did not keep the appointment or call to reschedule. The Department recommended denying mother's petition and terminating her parental rights.

On August 28, 2018, the court heard mother's section 388 petition and conducted a permanency planning review hearing under section 366.26. With respect to the section 388 petition, the court recognized that mother had made a substantial change in her life by completing an inpatient drug rehabilitation program. But the court concluded it was not in the children's best interest to grant the petition because mother failed to visit the children for seven months prior to the hearing. Further, the court observed that mother had failed to explain why she failed to visit the children.

After denying the section 388 petition, the court conducted the permanency planning hearing under section 366.26. The

court terminated mother's parental rights and set adoption as the permanent plan. Mother appeals.

DISCUSSION

Mother argues the court abused its discretion by denying her section 388 petition, which sought reinstatement of reunification services based on changed circumstances. We disagree.

Section 388, subdivision (a)(1), provides that a parent of a dependent child “may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court ... for a hearing to change, modify, or set aside any order of the court previously made or to terminate the jurisdiction of the court.” A parent bringing a section 388 petition has the burden of proving by a preponderance of the evidence that there is new evidence or changed circumstances that make a change of placement in the child's best interests. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642.) We will not disturb a decision on a section 388 petition unless it represents a clear abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415–416; *In re Marcelo B.*, at p. 642.)

“Section 388 provides an ‘“escape mechanism”’ for parents facing termination of their parental rights by allowing the juvenile court to consider a legitimate change in the parent's circumstances after reunification services have been terminated. [Citation.] This procedural mechanism, viewed in the context of the dependency scheme as a whole, provides the parent due process while accommodating the child's right to stability and permanency. [Citation.] After reunification services have been terminated, it is presumed that continued out-of-home care is in

the child's best interests. [Citation.] Section 388 allows a parent to rebut that presumption by demonstrating changed circumstances that would warrant modification of a prior court order. [Citation.]” (*In re Alayah J.* (2017) 9 Cal.App.5th 469, 478 [citing *In re Marilyn H.* (1993) 5 Cal.4th 295, 307, 309–310].)

As noted, the court found mother established changed circumstances by demonstrating her recent and successful efforts to comply with her case plan. The court acknowledged mother had some failures early in the proceedings but had more recently completed five months of outpatient rehabilitation followed by two months of inpatient rehabilitation.

Mother asserts “[t]he significant change in [her] circumstances justified an order by the court to reinstate reunification services, eventually allowing the children to return to her home.” But “‘[i]t is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child. [Citation.]’ [Citation.] The fact that the parent ‘makes relatively last-minute (albeit genuine) changes’ does not automatically tip the scale in the parent’s favor. [Citation.] Instead, ‘a number of factors should be examined.’ [Citation.] First, the juvenile court should consider ‘the seriousness of the reason for the dependency... .’ [Citation.] ‘A second important factor ... is the strength of the existing bond between the parent and child... .’ [Citation.] Finally, as ‘the essence of a section 388 motion is that there has been a change of circumstances,’ the court should consider ‘the nature of the change, the ease by which the change could be brought about, and the reason the change was not made before... .’ [Citation.] ‘While the bond to the caretaker cannot be dispositive ..., our

Supreme Court made it very clear in [*In re Jasmon O.*, *supra*,] 8 Cal.4th [at pp.] 408, 414–422] that the disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion.’ [Citation.]” (*In re D.R.* (2011) 193 Cal.App.4th 1494, 1512.)

Here, the court focused mainly on the fact that mother had not visited with the children for seven months prior to the 366.26 hearing—and had not provided any explanation for her failure to visit with them. Mother’s extended absence from the children’s lives was a reasonable factor for the court to consider, particularly in light of the strong evidence that the children had bonded with the foster parents, with whom they had lived for two years, and were excited to be adopted by them. Further, both children said they enjoyed visiting with mother but neither one expressed the desire to live with her. And Sophia worried that if she were to live with mother again, she could return to foster care in the future.

As in any custody determination, a primary consideration in determining the child’s best interest is the goal of assuring stability and continuity. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) After the termination of reunification services, a parent’s interest in the care, custody, and companionship of the child is no longer paramount. (*Ibid.*) Rather, at that point, the focus shifts to the needs of the child for permanency and stability. (*In re Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) In fact, there is a rebuttable presumption that continued foster care is in the best interest of the child (*id.* at p. 310) and that presumption applies with even greater strength where, as, here, the permanent plan

is adoption rather than foster care. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.)

A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, what is in the best interest of the child. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; and see, e.g., *In re Edward H.* (1996) 43 Cal.App.4th 584, 594 [“At the point of these proceedings—on the eve of the section 366.26 permanency planning hearing—the children’s interest in stability was the court’s foremost concern and outweighed any interest in reunification. [Citation.]”].) The court here properly focused on the children’s need for stability and the benefits they would gain from a loving and permanent home with the foster parents and concluded those factors outweighed mother’s desire to reunify.

Mother also asserts the children have a “fundamental independent right to their natural family relationships” and that the children’s ongoing relationship with her would be a benefit to them. Without negating the importance of biological relationships, we reiterate that after family reunification services have been terminated the court’s focus must shift to *stability* for the children, even if that means maintaining separation from their biological parents. In short, “[t]he presumption favoring natural parents by itself does not satisfy the best interests prong of section 388.” (*In re Justice P.* (2004) 123 Cal.App.4th 181, 192.)

Under the circumstances present in this case, the court did not abuse its discretion by denying mother’s section 388 petition.

DISPOSITION

The orders denying mother's section 388 petition, terminating mother's parental rights, and setting adoption as the permanent plan are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.